



ENVIRONMENTAL PROTECTION AGENCY

[EPA-R06-OW-2014-0569; FRL- 9920-30-Region-6]

Clean Water Act: Section 404(c) Exception Approval

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Approval for Exception to 1985 Clean Water Act (CWA) Section 404(c) Final Determination for the Bayou aux Carpes Site.

SUMMARY: This is a notice of the Environmental Protection Agency (EPA's) approval of coverage for the continued operation and maintenance of the portion of the Barataria to Alliance Transmission Line and an associated distribution line located in the Bayou aux Carpes CWA Section 404(c) site in Jefferson Parish, Louisiana, under an exception provided in the October 16, 1985, EPA Bayou aux Carpes Final Determination, as amended. This action covers discharges (approximately 1.35 cubic yards) to wetlands of dredged or fill material associated with ongoing activities by Entergy Louisiana, L.L.C. (Entergy) to provide electrical service to residential, commercial, military, industrial, and other facilities in nearby Plaquemines Parish, Louisiana.

DATE: The effective date of this modification is December 2, 2014.

ADDRESS: U.S. EPA Region 6, Ecosystem Protection Division, (6WQ-EC), Ross Avenue, Dallas, TX 75202-2733.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Keeler by phone at (214) 665-6698 or by email at keeler.barbara@epa.gov. Additional information and supporting documents are available at <http://www.regulations.gov> (Docket No. EPA-R06-OW-2014-0569).

SUPPLEMENTARY INFORMATION: The Bayou aux Carpes CWA Section 404(c) site is located approximately ten miles south of New Orleans, Louisiana, on the West Bank of Jefferson Parish. The site includes about 3,000 acres of wetlands subject to federal jurisdiction under the CWA. The area is bounded on the north by the Estelle Pumping Station Outfall Canal, on the east by Bayou Barataria (Gulf Intracoastal Waterway), on the south by Bayou Barataria and Bayou des Familles, and on the west by State Highway 3134 and the “V-Levee.” In 2009, most of the site was incorporated into the Barataria Unit of the Jean Lafitte National Historical Park and Preserve and the site remains subject to the CWA Section 404(c) restrictions.

Entergy petitioned EPA on August 18, 2014, for an exception to the October 16, 1985, EPA Final Determination for the Bayou aux Carpes site, issued under Section 404(c) of the CWA. An exception was provided in the original 1985 restriction for discharges associated with routine operation and maintenance of the Southern Natural Gas Pipeline Company pipeline. Subsequently, the exception was extended to cover minor discharges from emergency maintenance and relocation of a portion of another existing pipeline operated by Shell Pipeline Corporation. Both the original exception and the subsequent extended coverage were allowed based on determinations that the proposed activities associated with these existing linear service utilities would be unlikely to result in unacceptable adverse effects to the Bayou aux Carpes CWA Section 404(c) site. This action approves coverage under the same exception for the work requested by Entergy, which will also entail minor temporary impacts to the subject wetlands.

The August 18, 2014, request by Entergy, and other background information are available at: <http://www.regulations.gov> (Docket No. EPA-R06-OW-2014-0569).

Background

Section 404(c) of the CWA authorizes the EPA to prohibit, deny, restrict or withdraw the use of any defined area as a disposal site for dredged or fill material if the discharge will have unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. The U.S. Army Corps of Engineers (Corps) authorizes thousands of CWA Section 404 permits every year and the EPA works with the Corps and applicants to resolve environmental concerns. Since the passage of the CWA in 1972, the EPA has finalized Section 404(c) prohibitions or restrictions only 13 times. The use of this authority has typically involved major projects with unacceptable impacts on some of America's most ecologically valuable waters.

On November 15, 1985, EPA published a CWA Section 404(c) Final Determination (50 FR 47267) restricting, with three exceptions, future discharges of dredged or fill material to wetlands in the Bayou aux Carpes site. The CWA Section 404(c) action was based upon a thorough record of investigations, including field surveys, remote sensing and other technical analyses conducted by three EPA facilities, the U.S. Fish and Wildlife Service, the National Park Service and the Louisiana State University Center for Wetland Resources.

The 1985 EPA Bayou aux Carpes CWA Section 404(c) Final Determination included three exceptions. The first of the original three approved exceptions is for discharges associated with the completion of a specific design option for the Corps' Harvey Canal – Bayou Barataria Levee Project, which was never constructed. The second exception is for discharges associated

with routine operation and maintenance of the Southern Natural Gas Pipeline. The third exception provides for possible future EPA approved habitat enhancement activities. The EPA determined that these three types of activities would be unlikely to result in unacceptable adverse effects to the aquatic environment, as long as they were performed in accordance with any specified conditions and complied with any permit conditions that might be imposed by the Corps through the CWA Section 404 permit process. A provision was also included to allow other interests to petition the EPA for reconsideration if, in the future, other activities were to be proposed for public benefit which would result in only minor impacts.

There has been only one major modification to the EPA's 1985 decision to restrict discharges into the wetlands of the Bayou aux Carpes site. The modification was granted to the Corps in 2009 in association with the construction of flood risk reduction upgrades following Hurricane Katrina. On November 4, 2008, the Corps requested that the Bayou aux Carpes CWA Section 404(c) designation be modified to allow construction of a floodwall along Bayou Barataria and tying it into the planned West Closure Complex, as part of the post-Hurricane Katrina upgrades known as the Greater New Orleans Hurricane and Storm Damage Risk Reduction System Project. This work was but a small part of the larger effort to reduce flood risks to the 250,000 people living on the west bank of the Mississippi River and to infrastructure supporting the greater New Orleans area by building a more resilient and reliable storm damage and risk reduction system, as directed by Congress.

In addition to that modification of the 1985 EPA Bayou aux Carpes CWA Section 404(c) Final Determination, the EPA has considered very few requests for coverage under the original exceptions. In 1992, Shell Pipeline Corporation requested permission to allow the discharge of dredged and fill material effecting approximately 0.43 acres of wetlands in the restricted site in

connection with a proposed below ground pipeline relocation. This work was necessary to facilitate the enlargement of a federal hurricane protection levee and to remedy the emergency reconstruction of a leaking temporary by-pass pipeline segment. In addition, future routine operation and maintenance activities associated with this pipeline were requested to be excluded from the CWA Section 404(c) restriction. After notifying interested parties of the request via *Federal Register* publication and coordinating with the Corps and other agencies, the EPA granted the requests, publishing the decision at 57 FR 3757 (January 31, 1992). The EPA concluded that relocating the pipeline to non-wetlands was infeasible from the perspectives of engineering and public safety, the work would have only minimal and temporary effects on the wetlands at issue and the work was essentially the same as that envisioned under the second exception included in the 1985 Final Determination.

Over the years, additional requests for modifications have been the subject of initial analyses by the EPA. In each of those cases, however, the petitioners did not complete the analyses required for an agency decision.

Proposed Activities

The Barataria to Alliance Transmission Line was constructed in the 1960's by Entergy's predecessor, Louisiana Power & Light. Of the 74,012 foot total transmission line length, an 11,543 foot section and 15 towers are within the 120 foot right-of-way that runs through the southern portion of the Bayou aux Carpes CWA Section 404(c) site. The distribution line and 15 wooden single poles course through approximately 3,415 feet within a ten foot right-of-way section of the Bayou aux Carpes site.

On August 18, 2014, Entergy petitioned the EPA for an exception to cover anticipated temporary impacts to a total of 0.003 acres (approximately 1.35 cubic yards) of wetlands

resulting from operation and maintenance activities for portions of an existing transmission line and portions of a distribution line located within the Bayou aux Carpes Section 404(c) area.

Entergy's request involves activities required for preventative maintenance and inspections as required by Federal Energy Regulatory Commission regulations, North American Electric Reliability Corporation regulations and Entergy's guidelines and procedures. The activities subject to the request are projected to temporarily effect no more than 0.003 acres of the protected wetlands during the remaining 50-60 years of expected facility life.

Conclusion

Following receipt of the request by Entergy, the EPA conducted a technical review of the projected wetland impacts, considered the applicable programmatic requirements, coordinated with other resource agencies, and provided an opportunity for public review. We received no comments from the public and one statement of federal agency support for the proposed EPA action to approve the Entergy request, which came from the Jean Lafitte National Historical Park and Preserve.

As a result of our analyses, the EPA has approved the request by Entergy to perform limited operation and maintenance activities on the specified power lines located in the Bayou aux Carpes CWA Section 404(c) site in Jefferson Parish, Louisiana. The EPA has approved coverage for the continued operation and maintenance of these lines under an exception provided in the October 16, 1985 EPA Bayou aux Carpes Final Determination as amended.

The 1985 CWA Section 404(c) EPA decision to restrict the use of the Bayou aux Carpes site for the discharge of dredged or fill material included three exceptions. The second exception covered discharges associated with the routine operation and maintenance of portions of the Southern Natural Gas Pipeline that crossed the site. An exception was subsequently extended to

Shell Pipeline Corporation in 1992 for work on another pipeline that predated the 1985 EPA restriction. We have now extended coverage under that same exception in the Final Determination as amended to Entergy for the purposes specified in the August 18, 2014 request. These activities are similar to those previously approved for the Southern Natural Gas pipeline and the Shell pipeline in that the electrical lines existed prior to the 1985 EPA decision and the maintenance work is expected to incur only minor and temporary wetland impacts.

This decision reflects a unique set of circumstances and does not have any bearing on any other CWA Section 404(c) determinations, amendments, or modification requests. Each CWA Section 404(c) designation represents a unique situation that responds to a specific set of parameters unlike any other.

This CWA Section 404(c) approval covers discharges expected to impact no more than a total of 0.003 acres of wetlands (approximately 1.35 cubic yards) in the Bayou aux Carpes CWA Section 404(c) site from dredged or fill material associated with ongoing Entergy activities. The activities are restricted to those included in the August 18, 2014, request by Entergy to the EPA.

The approved work includes such routine maintenance as inspecting towers and lines for damage, replacing tower coatings, reapplying cathodic protection on foundations and anchors, cutting vegetation away from overhead lines, limited spot treatments with approved herbicides, and other emergency repairs including tower replacements in the same location. Entergy expects that any replacement of towers would be accomplished without discharging dredged or fill material, with the exception of tower structure #31. In that instance, special procedures should be employed whereby the old foundations would be left in place and the new foundations would be situated nearby. In all cases, the access to the site, the types of work and repair methods, and the kinds of vehicles and machinery to be used shall be designed so as to avoid and minimize

wetland impacts and shall be in accordance with the methods specified in the August 18, 2014, Entergy request.

Entergy shall be the responsible entity for ensuring compliance with the terms of this approval. Entergy shall be responsible for ensuring that all employees and contractors working within the Bayou aux Carpes CWA Section 404(c) site understand the terms and extent of this approval. Any violation of the terms of this approval shall be reported by Entergy to the EPA by telephone immediately upon discovery, followed by a written report by Entergy describing the circumstances and ecological impacts. In this event, all related work activities shall cease until resolution is reached with the EPA.

Entergy shall notify Jean Lafitte National Historical Park and Preserve prior to each instance during which inspections (including aerial inspections) or operations and maintenance work is performed within the Bayou aux Carpes CWA Section 404(c) site. In each instance, Entergy shall employ the least damaging equipment and repair methods possible.

This approval does not cover any activities that would impact wetlands in the Bayou aux Carpes CWA Section 404(c) site associated with any alternatives for placing the currently out of service distribution line back into service or to remove the 3,415 foot-long distribution line and associated 15 wooden poles. Similarly, this approval does not cover the deactivation of the transmission line or the removal of the 11,534 foot-long power line and 15 transmission structures within the Bayou aux Carpes CWA Section 404(c) site. Such activities should be specifically coordinated in advance with the EPA and Jean Lafitte National Historical Park and Preserve.

This approval does not provide authorization under Section 10 of the Rivers and Harbors Act of 1899 or Section 404 of the Clean Water Act for Entergy's proposed discharges. Entergy

must obtain authorization from the Corps in order to proceed with any activities governed by these statutes at the Bayou aux Carpes CWA Section 404(c) site. Entergy shall also be responsible for obtaining all necessary permits and approvals from the National Park Service, Jean Lafitte National Historical Park and Preserve. In addition, Entergy shall be responsible for obtaining any other necessary permits, notices and approvals at all levels of government and for conducting all required regulatory coordination prior to implementing any of the work covered by this approval.

In the event that Entergy determines that the continued operation and maintenance activities covered by this exception will cause or are likely to cause unanticipated and unacceptable adverse impacts, it shall notify the EPA. Similarly, if the EPA determines that the continued operation and maintenance activities covered by this exception will cause or are likely to cause unanticipated and unacceptable adverse impacts, the EPA may reconsider this approval.

Dated: December 2, 2014.

Samuel Coleman, P.E.,

Acting Regional Administrator.